

IN THE MATTER OF : BEFORE THE

ANTOY LLC, T/A : HOWARD COUNTY

ANTWERPEN NISSAN : BOARD OF APPEALS

Petitioner : HEARING EXAMINER

: BA Case No. 11-006S

DECISION AND ORDER

On December 19, 2011, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Antoy, LLC, t/a Antwerpen Nissan, for a variance of the Sign Code to relocate a 25' (height) x 9.75' (width) freestanding sign 11 feet from the edge of the Auto Drive right-of-way (ROW) in a B-2 (Business: General) Zoning District, filed pursuant to Section 3.513, Title 3, of the Howard County Code (the "Sign Code").

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Sang Oh, Esq. represented the Petitioner. Robert Vogel in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. Property Identification. The subject property is located on the west side of Auto Drive, at 12451 Auto Drive (the "Property"). The Property is located in the 5th Election District in Ellicott City and is referenced as Tax Map 34, Parcel 365. Lot L1.

2. Property Description. Auto Drive is the site of multiple car dealerships. The 3.4235-acre, generally rectangular Property is improved by Antwerpen Nissan automotive dealership buildings set back from Auto Drive. The Property lies at the end of two cul de sacs and is the last dealership along Auto Drive. The horizontal curvature of Auto Drive obscures the visibility of the dealership sign at its current location. Auto Drive is also lined with deciduous trees that obstruct visibility of a conforming sign.

3. Vicinal Properties. The property to north the RC-DEO (Rural Conservation: Density Exchange Option) property is in agricultural use. To the west, the RC-DEO zoned parcel is improved by a single-family residence. The southern, B-2 zoned property is improved by the Coleman Land Rover dealership and the western B-2 zoned property is improved by the Coleman Honda dealership.

4. Speed Limit. The speed limit on Auto Drive is 25 MPH.

5. The Sign Variance Request. The Petitioner is requesting a variance under Section 3.501.C of the Sign Code to relocate a 25' (height) x 9.75' (width) (42-sq. ft.) freestanding sign 11 feet from the edge of the Auto Drive right-of-way (ROW) rather than the 42' setback required in relation to the aggregate sign area and the 50' setback required in relation to the sign's height. The sign to be relocated has a Nissan icon at the top with red and grey striping below.

6. The sign would be located on the north side of the Nissan dealership entrance, based on the Technical Staff Report's recommendation.

7. Robert Vogel testified that the road's curvature makes it difficult for customers to locate the dealership and that these customers regularly complain about the difficulty of locating the dealership. He introduced into evidence Petitioner's Exhibit 1, a site plan depicting the road's curvature and Petitioner's Exhibit 2, several photographs of Auto Drive, the dealership and the existing sign, which is not readily visible from Auto Drive. These recent photographs indicate that the spreading deciduous maple trees obstruct a motorist's view of a conforming sign in the winter months.

CONCLUSIONS OF LAW

Section 3.513(b) of the Sign Code permits the Board of Appeals to grant variances from the provisions of the Sign Code where certain determinations are made. Based upon the foregoing Findings of Facts, I conclude as follows:

- 1. That there are unique physical conditions or exceptional topographical conditions peculiar to the property on which the proposed sign is to be located, including the location of existing buildings and other structures, irregularity, narrowness or shallowness of the lot, irregularity of the road right-of-way, location on a highway that has a dependency on nonlocal use, which conditions lead to practical difficulty and unnecessary hardship in complying strictly with the provisions of this subtitle.**

The horizontal curvature of Auto Drive leads to practical difficulty and unnecessary hardship in complying strictly with the setback requirements of the Sign Code, in accordance with Section 3.513(b)(1).

2. Or, that there are obstructions, such as excessive grade, building interference, structures or landscaping on abutting property or properties which seriously interfere with the visibility of a proposed sign, resulting in practical difficulties and unnecessary hardship in complying strictly with the provisions of this subtitle.

Existing trees and the road curvature impede motorists' view of a complying sign, causing practical difficulties and unnecessary hardship in complying with this subtitle. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(2).

3. Or, that there are historical, architectural, or aesthetic characteristics which shall be considered.

There are no historical, architectural, or aesthetic characteristics of the Property to be considered under section 3.513(b)(3).

4. That the variance, if granted, will not adversely affect the appropriate use or development of adjacent properties, nor result in a dangerous traffic condition.

There is no evidence that granting of the variance would adversely affect the appropriate use of development of adjacent properties, nor result in a dangerous traffic condition.

5. That the requested variance is the minimum necessary to afford relief, and can be granted without substantial impairment of the intent, purpose and integrity of this subtitle.

The relocated sign is the minimum needed for a motorist to identify the dealership. The Hearing Examiner therefore concludes the proposed sign is the minimum necessary to afford relief and can be granted with substantial impairment of the intent, purpose and integrity of the Sign Code, in accordance with Section 3.513(b)(5).

6. That such practical difficulties or hardships have not been created by the applicant; provided, however, that where required findings pursuant to section 3.513 are made, the purchase or lease of the property on which a proposed sign is to be located subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

The practical difficulties are a result of unique Property conditions, vicinal obstructions, and highway conditions. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(6).

ORDER

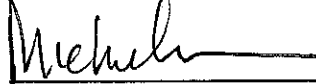
Based upon the foregoing, it is this 22nd day of December 2011, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Antoy, LLC, t/a Antwerpen Nissan, to relocate a 25' (height) x 9.75' (width) (42-sq. ft.) freestanding sign 11 feet from the edge of the Auto Drive right-of-way (ROW) rather than the 42' setback required in relation to the aggregate sign area and the 50' setback required in relation to the sign's height in a B-2 (Business: General) Zoning District, is hereby **GRANTED**;

Provided, however, that:

1. The variance shall apply only to the uses and structures as described in the petition and plan submitted, and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: 12/22/11

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.